systems were benefiting in the apportionment of the "federal aid to wildlife-restoration fund" at the expense of those States with simple licensing structures; and by 1957 the problem became a matter of concern to the International Association of Game, Fish and Conservation Commissioners (R. 59–82). Not until late 1958, however, was the matter brought to the attention of the Secretary of the Interior or the Assistant Secretary having jurisdiction over fish and wildlife (R. 29, 119–125).

At the request of the Assistant Secretary for Fish and Wildlife of the Department of the Interior, the Solicitor of the Department issued a summary opinion in March 1959, in which he stated that the term "paid hunting-license holders" should be construed as referring to individuals holding one or more licenses and not to the number of licenses held (R. 128). The Assistant Secretary then wrote to the fish and game departments of all the States quoting the Solicitor's opinion and suggesting a form of certification for "paid hunting-license holders" (R. 146–147). In June 1959 the Solicitor issued a formal memorandum opinion (R. 129–140), in which he reviewed in detail the administrative interpretation of the Act, and concluded that "in apportioning Federal funds for wildlife restoration purposes under section 4 of the Act the Secretary of the Interior should include as 'license holders of each State' all individuals to whom a State has issued one or more licenses; he should not include all licenses issued by a State when, under State law, more than one license may be issued to a single individual" (R. 136).

Forty-six States submitted certifications in the prescribed form which were accepted by the Department. Petitioners submitted certifications which showed on their faces that the number of "paid hunting-license holders" certified was actually the total number of hunting licenses sold rather than the number of individuals to whom one or more licenses had been sold (R. 151–155, 248).

In November 1959, the Secretary apportioned the fund among the several States. Since petitioners had not submitted acceptable certifications, only partial apportionments were made for them. This was done by eliminating the categories of licenses which probably involved duplications of individuals. The sums withheld were placed in reserve to afford petitioners an opportunity to submit revised certifications conforming to the guidelines theretofore laid down (R. 156–158).

2. *Proceedings below.* Petitioners' actions in the district court sought (1) a declaration that "license holders" means total licenses issued, and (2) an order directing the Secretary to make apportionment of the fund on that basis. On an extensive record made on affidavits and exhibits, petitioners moved for summary judgment. The Secretary moved to dismiss, or, in the alternative, for summary judgment. The district

---

[1] Under the scheme of the Act no payment of apportioned moneys is made until a full and detailed statement of the state's project and the plans, specifications and estimates have been submitted to and approved by the Secretary, all of which occurs after the initial apportionment. 16 U.S.C. § 669e. And actual payment normally follows completion of the project. *Id.*, § 669f.

court agreed with petitioners' interpretation of the statutory apportionment formula (Pet. 5a) and entered an order granting petitioners' motions and requiring the Secretary to apportion the funds on the basis of the court's construction of the statute (R. 327–328).

The Court of Appeals reversed (one judge dissenting). It held, *inter alia*, that, on the basis of the plain and unambiguous statutory language, "the term 'hunting-license *holders*' refers to *persons*, not permits", that is, "the number of *different individuals* holding licenses that must be counted, rather than the total number of licenses issued"; that the legislative history proved nothing to the contrary; and that such interpretation accorded with the administrative construction given the statute from the beginning (Pet. 13a–16a).[4]

ARGUMENT

This case turns upon the interpretation of a statute governing action by the Secretary of the Interior, to be made in light of the language of the Act and the facts of record showing the administrative construction. There is no conflict among the circuits, and the decision of the court below is correct. No need exists for further review by this Court.

Essentially, petitioners' position is two-fold: first, that the lower court's interpretation of the apportion-

[4] Noting that in practice the fund was apportioned for some 20 years on the basis of the total number of licenses issued by each State, with elimination only of multiple licenses obviously issued to the same person, the court said: "But it is plain they always knew that the law required the elimination of *all* duplications" (Pet. 16a).

ment formula will have a serious and inequitable impact on State restoration programs, and second, that the interpretation is at variance with the legislative intent and the administrative construction during the major part of the life of the Act. Neither of these contentions has merit.

1. The construction of the statute adopted by the court below does not raise any problem of general importance involving the relationship of the federal government to the States. As the opinion points out, the Secretary is, in a significant sense, "disinterested", for, in principle, "the whole fund is distributed among the several states," after deduction of administrative expenses, and the "real argument, then, is between those states with fragmented licensing systems and those with relatively simple license structures" (Pet. 16a, fn. 23).

In other words, the challenged opinion, in limiting certifications to "holders", i.e., persons, rather than including all licenses, can have an adverse effect, if any, only upon those States which have "fragmented" their licensing structures to the point where, in certifying all licenses, they can obtain a disproportionate share of the "federal aid to wildlife-restoration fund" at the expense of those States with simpler licensing systems.[5] This was the gist of the certification prob-

[5] In this connection the court below noted: "There is, of course, nothing inherently more reasonable about apportioning on the basis of total licenses rather than license holders. On the contrary, appellees' interpretation would encourage a system of particularized licenses for each type of game in what the Secretary rightly labels 'an unseemly grab for federal funds,' which Congress cannot be assumed to have intended." (Pet. 16a, fn. 24).

lem as it was considered in 1957 by the International Association of Game, Fish and Conservation Commissioners, which stated that a State with a multiple licensing structure is "not taking advantage of federal aid, [it] is taking advantage of [its] sister states" (R. 75). And this organization endorsed the Secretary's apportionment policy in 1959, after the Secretary's action had made clear that certifications must be on the basis of "holders" rather than licenses (R. 145).

Consequently, contrary to petitioners' assertion that the decision, if allowed to stand, "will have a serious impact on important wildlife restoration programs of the states" (Pet. 6), we submit that the Secretary's approach avoids unfairness. The "equitable distribution of this revenue to [all] the states", in order to assist the States in restoring the environment of wildlife and its preservation, was the specific objective of the Congress. H. Rep. No. 1572, 75th Cong., 1st Sess., p. 2. Considering this aspect of the matter as a convincing argument against the interpretation which petitioners now seek, the Solicitor of the Department of Interior in his detailed memorandum opinion of June 1959 correctly reasoned that "[a]n apportionment of revenues on the basis of sales of hunting licenses would not, unless uniform in all States, result in an equitable distribution of funds and could, we believe, defeat the purposes of the legislation, since the multiplication of types of licenses could eventually destroy any semblance of a relation-

ship between the need for assistance and a rational apportionment of the revenues" (R. 132).

It follows that the decision below, far from having a generally adverse effect, will foster a more equitable distribution of the fund among the States.

2. Moreover, the lower court was correct in holding that the unambiguous language of the statute calls for certifications of "holders" rather than licenses; that the statutory history proves no contrary Congressional intent; and that the Act was so administratively construed from its inception (Pet. 13a–17a).

The term used by the Congress was "the number of paid hunting-license holders". As the court noted, the phrase must refer to *persons*, and not, as petitioners maintain, to permits, for otherwise the word "holders" is entirely superfluous. Accordingly, it is the court's construction, rather than petitioners, which gives effect to all of the statutory language and construes words in their usual sense. *Flora* v. *United States*, 357 U.S. 63; *Yates* v. *United States*, 354 U.S. 298.

Moreover, the history does not aid petitioners. As the court below pointed out, there is no indication that the few references to apportionment on the basis of "licenses" in the committee hearings and on the floor of the Congress were made advisedly (Pet. 14a). And while the illustrative computation made in the

---

[6] While it may be true, as stressed by petitioners, that the function of multiple licenses was to meet resource management problems (Pet. 8), this is no justification for obtaining the greater and inequitable share of the restoration fund which such licensing structures sought.

House of Representatives report[7] was apparently based on total licenses issued, these were 1935 figures furnished the Congress by the Department of Agriculture[8] and there appears to have been no reason, prior to the enactment of the pertinent statute, for the States to maintain figures as to the number of individual hunters rather than the number of licenses sold. Moreover, the licensing structures in 1935 were relatively simple compared with the later multiple-licensing structures, and at the inception of the Act the number of hunters was substantially represented by the number of licenses issued. Notwithstanding petitioners' assertion[9] to the contrary, the record so establishes (R. 28–29, 137, 171–172, 188–189, 261–262), and the court below properly so found (Pet. 14a, fn. 20).

The court also correctly rejected petitioners' contention that the course of administrative interpretation was contrary to the construction adopted by the court. The Federal Aid Manual issued in 1938 expressly stated that "the law requires the number of license holders and not the number of individual licenses" (R. 47). Successive revisions from 1940 through 1957 contained the same language. And the Solicitor of the Department of Interior properly noted and relied upon this consistent administrative interpretation when he gave his opinion in 1959 (upon which the Secretary acted) that only persons and not licenses should be counted (R. 129–140).

[7] No. 1572, 75th Cong., 1st Sess., p. 3.

[8] *Id.* at pp. 4–5, fn. 1.

[9] It is noteworthy that a letter written in 1956 by the then Solicitor of the Department in response to an inquiry from the Attorney General of Idaho reflected this same construction of the statute (R. 43–46).

While it is true that the administrative practice in screening and accepting certifications did not fully accord with the agencies' legal interpretation, the record explains the reason for the faulty practice (R. 28–29), and the court was plainly correct in stating that the administrators "always knew that the law required the elimination of *all* duplications" (Pet. 16a). It follows that petitioners' arguments that the Secretary changed a long-standing administrative interpretation are without substance.[10]

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.
MORTON HOLLANDER,
KATHRYN H. BALWIN,
Attorneys.

JANUARY 1963.

[10] There is an additional and independent reason calling for denial of the petition. As Judge Washington, concurring in the result, noted, "this is not a case for mandamus [and] under the Supreme Court's decision in *Panama Canal Co.* v. *Grace Line, Inc.*, 356 U.S. 309 (1958), we should order that the complaint be dismissed for lack of jurisdiction" (Pet. 17a). In our view, Judge Washington's opinion on this phase of the case correctly states the applicable law.

U.S. GOVERNMENT PRINTING OFFICE 1963